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Department of Land

OFFICE N Office

STATION Mundra

No.	Dated
45	19-F-35

Land
A 29

Pages in the file

(SUBJECT.)

Permn Tenancy - (Surname) - 7 rooms &
Defective plan not shown in the notice.

Corrected in red, negative

A1 Box 7 1

C-5-286.

Ref. 2917-35-A5. South Kanara Collector's Office,
Mangalore, dated 11th July 1935.

Recd in B.R.O on 19.7.35

From A2966

E. M. Gavne, Esquire, I.C.S.,
Collector of South Kanar

The Secretary to the Board,
Land Revenue & Settlement,
Madras.

Sir,

Land Revenue collection - Defects in forms of processes Nos. 4, 5 and 7 - difficulties - Instructions - solicited.

I invite the attention of the Board to my Reference C.No. 47/34 (Confdl.) dated 8-11-34 and the Board's order in para 3 of its Reference No.C.7005-34-4 dated 22-11-34.

M 15-19 of 7 (K)
L 21 of 7 (K)

2. Owing to the difficulties experienced in South Kanara in the speedy realisation of the arrears of Land Revenue the Board had suggested that land sales should be tried for arrears of the earlier kists in the case of known defaulters. I then brought to the notice of the Board that the existing wordings of the processes Nos. 4, 5 and 7 were interpreted as rendering it necessary to issue such processes for each of the kist months which accrue in a fasli. If land sales were to be notified for the first kist, it was desirable that the sale should include all arrears due by the date of the sale. I therefore suggested certain additions and alterations in the existing forms Nos. 4,5 and 7 in my Reference quoted above. But the Board in para 3 of its Reference No.C.7005-34-4 dated 22-11-34, ordered that my suggestions were not possible unless the law was changed. The effect of this coupled with the instructions issued in Board's Proceedings No.32 dated 5-5-23 was a definite ruling that lands could only be sold for the arrears shown in No.4 notice and not for the arrears shown in No.4 and such further arrears as had accumulated against the

land holder by the date of the sale.

3. This year as a result of the instructions of the ----- Board having been followed rigidly, there is a great -------- deterioration in the collections of Land Revenue of Kacarged Taluk for June 1935. Lands notified for sale in June 1935 for failure to pay the first kist in February 1935 have been withdrawn from sale on payment of that kist only. Previously, land-holders were being (in some cases) constrained to pay the full arrears on the land before the sale was set aside under Section 37 of the Revenue Recovery Act.

It may be argued however that it was not the intention of the Legislature that land sales should be held more than once in a year for the total kists due by a pattadar. The land sale procedure with its notifications published in the District Gazette and elsewhere is too cumbersome and ------ intricate to put into operation often. The question therefore is whether it is really impossible within the four ---- corners of the Act to recover at the land sale the full ---- arrears due from the defaulter at the time of the sale. Kists are no new invention, but are much older than the Act. It does not seem likely that the framers of the Act would have contemplated the tedious processes of land sale being undertaken twice for the arrears of the same fasli due by a pattadar. I think that it is for this reason that the provisions of section 37 are very fully set out. The section says that the sale may be set aside if the defaulter deposits -

i) Full amount of arrears of revenue.

ii) Interest thereon.

iii) Charges in demanding arrears.

iv) Charges in managing the estate, or in taking the steps necessary for sale.

This section can therefore only mean that the landholder can prevent the land sale if he clears fully the dues payable by him to Government. The present ruling of the Board would be that for "full amount of the arrears" should be understood

"the amount of the arrears as stated in notice No.4" (Section 25), that is one quarter of the full arrears where No.4 notice has been issued for the first kist.

5. The intention of the land sale is to recover the amount due after giving every possible warning and notice to the pattadar. I submit that all the provisions of the law contemplate that by the payment of the arrears the land shall be freed and it seems quite anomalous that an impending sale should be set aside by the deposit of the 1st kist of February only, when the other three kists have fallen due before the date fixed for the sale. If throughout the stages leading up to the land sale, some two or three months after the issue of notice No.4, it is only the precise amount that is mentioned in this first notice of demand (Form No.4) that can be recovered. there seems no object in the use of the word "shall" in section 37

6. I would also invite attention to the precise wording of notice No.5. (p.393 B.S.O. Vol.II). The last sentence of No.5 notice shows that when the land has been attached then kists accruing will be levied as arrears on the date of the sale of the land. In all cases of land sale the land is attached as a formality preceding the sale. This means that the one attachment does provide for kists falling due after the issue of the No.4 notice. This addition to the No.5 notice seems meaningless, if only the precise amount mentioned in Notice No.4 can be recovered at the sale, and a subsequent Notice No.4 must be issued for the arrears due under the latter part of Notice No.5. The sale notice (Form 7-A) mentions the full amount of arrears. There seems no reason why this should not be the full arrears on the date of sale.

7. The matter is one of great importance because the same big pattadars in Hoodrug Sub Taluk default year after year and take the fullest advantage of the Act to delay payment till the very latest date. The case of a landholder

having to pay Rs.4000/- assessment in 4 instalments may be considered. Reckoning the interest at 9% that he would have to pay to borrow money, he gains very materially if he does not pay his assessment till he is compelled to, in order to stop a land sale. The result of default is that No.4 notice is issued for the first (February) kist about the end of March. It is June before the sale can be held, and only one kist is recovered by the sale. All formalities are started again and it is not till the end of September that he has to deposit the rest of the kist to save the second land sale. His position is as follows:-

Month of kist.	Month of sale.	Amount due.	Interest.	Interest payable to Government.
1st - February	June	1000/-	37-8-0	..
2nd - March	September	1000/-	52-8-0	10-0-0
3rd - April	Do.	1000/-	45-0-0	10-0-0
4th - May	Do.	1000/-	37-8-0	10-0-0
			172-8-0	30-0-0

N.B. Interest is the interest that could be earned by the kist amount at 9% from date of kist to the end of the month in which the sale is held.

I have supposed the sale to take place in September. But sales go on till December. The 1st kist of February is paid to stop the land sale in June and the other three kists to stop the second sale at the end of September. The ryot gets the use of the 1st kist of Rs.1000/- for 5 months, the 2nd kist for 7 months, the 3rd kist for 6 months and the 4th kist for 5 months. During all this time, he has the use of his money to lend out at higher rates of interest or alternatively he is saved from paying interest at least at 9% if he has to borrow the money. The big ryots of the Nandrug Division are secure, in that there is nothing worth distraining in their houses that will fetch more than one or two hundred rupees. It is idle to suppose that

this saving in withholding payment is not perfectly well known to these defaulting Jenmis. In other parts of the District, the landholders with large amounts to pay have generally moveables which can be distrained and they generally pay before the immoveable property is attached or sold. But defaults in the big taruvads of the Hosdrug Division have become a regular process, managed by their Vakils, and in consequence the cycle of land revenue collection lasts from one kist collection season to another. This year at the end of June the district arrears are Rs.136694 or 4.9% of the demand. The arrears for Hosdrug Sub Taluk are Rs.55392 or nearly 2% of the district demand. The hard work done by other Tahsildars and Deputy Tahsildars is thus clouded over by the arrears in this one corner of the district.

8. I request that the legal aspect of the question may kindly be referred to the Advocate-General for his opinion and necessary orders passed on this report.

Your obedient servant,

Collector.

11.7.35

A 2966/35

20 A.S.L.R.

Submitted

2nd Nov Comments may be
over. Kill this record of connected
records from M.R.O.

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sk

2/3/35

DRAFT FOR APPROVAL.

Date. Initials.

When received for fair copying ..

When copied

When examined:.

When signed ..

When despatched.

SUBJECT:— Revenue Recovery - ~~South Kanara~~ (South Kanara) — Proceedings 5 + 7 - Inclusion of items not shown in the notice of demand

READ AGAIN ..... , dated Collectors proposals negativing 19....

,, ,, ... ,, ... 19....

READ *ALSO*:— Ref 2917-25-A

A No. 2966 From the Coll^r S Kanara, No. ....., dated .. .. 19..

,, ... ,, ... ,, ... ,, ... 19..

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~~Order~~ / Resolution — Ms. / ~~Rout.~~ No. 3145, dated 19 8 1935.

With reference to his letter read above the Collector's attention is invited to the Judgment of the Madras High Court-Common with B.P. No 325 Press dt 28-11-1898 which makes the legal position quite clear. The Board considers that there is no use in referring the matter to the Advocate-General as the High Court has already decided the point

1. B.P. Mis 1237 Confell dr 26-3-35

2. Q.V.O. note A 384-35 dr 4-5-35.

3. B.P. Mis 2659 dr 7-8-34.

4 B.P. Rl- 3944 Press dr 30-7-34

5 B.P. Mis 120 dr 12-1-32.

6 B.P. Mis 423 dr 4-2-28

7 B.P. Press 32 dr 5-5 23

8 B.P. NO 157 dr 1-8-04

9 B.P. NO 256 dr 25-10-01

1 B.P. NO 80 dr 20-3-99

0 B.P. NO 325 dr 28-11-98

3 B.P. NO 253 dr 21-9-98

14 B.P. NO 90 dr 2-4-98

5 B.P. NO 357 dr 26-10-97

6. B.P. NO 53 dr 12-2-97

7 B.P. NO 888 dr 19-10-88

8 B.P. NO 3155 dr 3-11-74

Revenue Recovery - Sale of land - Defects Forms of processes 4, 5 and 7 - Difficulties - Instructions

A 2966/35 from the Coll^r of S. Kanara

20 A.S.L.R.

Please see the Collector's letter at Pp 1-5 of

2) In his letter at Pp 15-19 of of B.P. His No 1237 Confdl dt 26-3-35 the Collector of S. Kanara pointed out certain defects in the forms of processes Nos 4, 5 and 7 and suggested amendments to the forms. The Collector's proposal was in effect to include arrears which occurred subsequent to the issue of notice of demand (No 4) in the notices of attachment and sale. He was informed that the proposals made by him were not possible unless the law was changed.

3) The Collector reports that the instructions issued by the Board for the prompt realisation of the arrears were rigidly followed in fasli 1344 and that there has been no improvement in collection work in the Hosdu

cession due to the fact that some big
ots take advantage of the delays that
ecessarily occur in setting the provisions
the Act in motion to realize the arrears.
e therefore considers that some way
should be found for interpreting the wording
the forms of processes Nos 4, 5 and 7 in
such a way that it must be possible
collect the full land revenue (all the
ists) in one single sale proceedings. He
equests the Board to consult the Advocate
eneral in the matter.

4| Before the points raised in the
ollector's letter are examined in detail.
t is necessary to define the term arrears."
Attention is invited to the notes in P.P.
No. Pls 423 & 4-2-28. which contains a
discussion on the subject.

5. The Collector argues that it
was not the intention of the legislature
that land sales should be held more
than once a year for the total amount
of land revenue due by a registered
holder in a year. He refers to Section
37 ✓ of the Act according to which the
defaulter should, among other things,
pay the full arrears of land revenue
among the
if he should desire that the land sale

shoud be asserted'. The expression "full amount of the arrears referred to in the Act does not mean the amounts which have not been noted in the notices of demand or attachment. Similarly S 37-A contemplates that the defaulter should be given an opportunity of getting the ~~sale~~ attachment cancelled by paying the arrear in respect of which sale proceedings have been taken. The term full amount of land revenue can only signify that partial payment cannot be accepted. This is clear from the first sentence of form no 5 (Notice of attachment) which runs as follows:-

Take notice that as you have not paid or shown sufficient cause for the non-payment of Rs ....., although the said sum has been duly demanded in writing from you ... The amount duly demanded is the amount shown in the notice of demand i.e. form no 4. Hence there is a legal bar in including in form no 5 arrears which are issued subsequent to the issue of notice of demand.

The Collector seems to consider that the second sentence of the notice of attachment strengthens the view taken by him. This sentence was introduced by BP. No 3155 dt 3-11-1874

A perusal of the B.P. does not reveal the exact purpose for which the addition was made. But the idea seems to be to give a warning to the defaulter that he should not consider that he will be absolved of all responsibility by the attachment of the land and that he will be liable to pay revenue ~~on that~~ that has accrued and is accruing

Again the Collector refers to the expression full amount of arrears occurring in para 6 of the sale notice. (form No 7). As has already been stated above "full amount" can only imply ~~means~~ that part payment will not do.

It will be seen from the above that the inclusion of arrears accruing subsequent to the issue of notice of demand in ~~B.P.~~ the notices of attachment and sale will vitiate the sale proceedings. Attention is invited to the judgment of the Madras High Court printed at pp 2 to 4 of B.P. No 325 dt 28.11.98. The Collector's proposal to interpret the wording of the forms of processes nos 5 and 7 in the manner suggested by him does not seem possible. In the circumstances it is a point for consideration whether it is necessary to consult the Adv. General.

P.T.O.

Sd
1.8.35

3/8/35

Para 6 of the Collector.

The last sentence of Notice No 5 makes the defaulter responsible for the Rents accruing from the date of the attachment Notice until the date of Sale and proceeds to state that the said Rents will be demanded of and levied from you as arrears of land revenue The sentence posted makes it quite clear that there should be a separate demand in respect of the subsequent arrears and separate proceedings under the Act. The Collects interpretation does not seem to be correct.

The High Courts' Judgment at pp 2-4 of (S) makes the legal position clear. The Collector's attention may be drawn to it.

In this connection reference solicited to para 2 of the B.O. at p 5 of (S) The amendment referred to therein will make Collection work easy but it seems to have been dropped

26835

2o A.S.

Please see the Secys order at ps nf.

2/. The Board's monthly Volume Containing PSB. No 157 dt 1-8-04 is put up.

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S

The High Courts observations in (S) makes it quite clear that Cole's proposal cannot be brought within the 4 corners of the Act as it stands. He may be referred to this